

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
May 4 2022

MEMBERS PRESENT: Richard Brooks, Keith Perkins, Ken Hilton – Alternate, Matt Keiser Chair, Anthony Jones

EXCUSED MEMBERS: Brad Fredette, and Kenneth Vincent

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser appointed Hilton and Jones as voting members.

1) Approval of the minutes:

Brooks stated he had a correction, that it states Ken Vincent was present which he was not.

Brooks **MOVED** to accept the April 6, 2022 with correction stated.

Perkins seconded the motion.

The **MOTION CARRIED** 5-0.

2) OLD BUSINESS

A) Any old business that may come before the Board. - No other old business.

3) NEW BUSINESS

A) **Deborah Wade is seeking a Variance from Table 5.A.1 to allow a two-lot subdivision lot 1 would have a shed located within the side setback (2.26' setback) on a property and lot 2 would have less than the minimum frontage 102.16' of frontage where 115' is required and located at 181 Green Street, in the Residential Single Family (R1) District, Assessor's Map 08 Lot 86, ZBA#05-2022**
PUBLIC HEARING

Keiser opened the public hearing.

Mears stated the applicant is seeking a variance to allow for a two-lot subdivision that would leave an existing shed within the 10' side setback and create a lot without the required 115' of frontage. The property is located in the R1 District, serviced by City water and sewer. If the variance request is approved, the applicant would go through with a subdivision approval process with the Planning Board along with a Conditional Use Permit application if there is a structure within the 150' wetland setback. Reviewed historic variances granted for the property.

Keiser asked for clarification of the wetland buffer setback.

Mears stated to build within the 150' wetland buffer area a CUP is required.

Jones added that subdivisions do fall under Section 13 of the Zoning Ordinance as development.

Brett Allard of Shaughnessy Raiche PLLC was in attendance to represent the applicant. **Deborah Wade and Tim Swinerton** were also in attendance.

Allard stated the property is located in the R1 District, connected to City water and sewer. Total property size is just under 41,000 SF with 217.16' of frontage. Have about triple the lot size requirement for this zone but just short of double the frontage requirement. Property has a two-story dwelling constructed in about 1940, a garage on the SE corner of property, finished barn behind that, shed located behind the house that is located on a foundation.

Allard stated proposed lot 1 is proposed to be 15,259 SF with 115' of frontage, dimensionally compliant and will maintain the house and shed. The shed requires a variance because it encroaches to approximately 2.26' setback where 10' is required. Proposed lot 2 is proposed to be 25,721 SF with 102.16' of frontage, where 115' is required and will maintain garage and barn with a proposed new single-family home. Proposed lot 2 is compliant with all setbacks. Acknowledged they would be required to receive the conditional use permit.

Allard stated the proposed lot line could be moved to give proposed lot 2 a little more frontage but would create the need for two frontage variances. Felt the most prudent design is to give at least one lot with compliant frontage. The property is uniquely situated for a two-lot subdivision, in part because there is already two existing curb cuts on the property, one for proposed lot 1 and second on proposed lot 2, wide curb cut in front of garage and barn. If all requests are approved the client proposes to move into the new proposed single-family home. Noted the surveyor attended an SRTC meeting earlier in the day and received a few minor comments.

Allard reviewed the variance criteria:

1. Granting the variance will not be contrary to public interest, do not believe there would be any alteration to the essential character of the neighborhood or area. The purpose of the proposed subdivision is to accommodate a new single-family home, new home will be consistent with existing conditions of the property and the neighborhood that is primarily residential. The shed is existing, so granting the variance would not change the essential character in the area but rather allow it to remain on its existing footprint. Does not think there would be any threat to the public health, welfare or safety, both lots have safe and sufficient access by their own curb cuts on Green Street and no new cuts would be required.
2. Granting the variance would be consistent with the spirit of the ordinance, reviewing the primary purpose of setback requirements it is to ensure orderly development and prevent overcrowding. Do not think those are of issue here, there is sufficient area to construct a new home, recognize they need a CUP, meeting all other setback requirements, the existing shed is in place so there is no overcrowding. Both lots are serviced by Municipal water and sewer so they are not required to get a portion of land open for a private septic or well radius. Based on existing conditions of the property feel its unusually well situated for a two-lot subdivision and therefore consistent with the spirit of the ordinance.
3. Granting the variance would do substantial justice, do not believe there is any injury to the public if the variance is granted. Based on the existing conditions, size of the property, believe the subdivision is appropriate for the area, granting variances that are appropriate for the area does substantial justice. There is no gain to the public if the variance is denied. When balancing public and private rights believe that granting the variance would do substantial justice.
4. Values of surrounding properties will not be diminished, think this proposal is in harmony with the neighborhood, lots will remain consistent with the residential character of the neighborhood. No external changes to lot 1, shed exists on a foundation, there would be the addition of a new single-family home on lot 2 and thinks it would fit with the existing character of the lot and neighborhood. Not seeking setback variances to build closer to abutters, proposed use is single family residential which is an allowed use, which allowed uses are considered reasonable. Subdivision approval is required and PB would ensure surrounding property values were not impacted.
5. Unnecessary hardship, this property has many special conditions, much larger than other properties in the area, which is the most important special condition when talking about a variance for a subdivision want to ensure there is no overcrowding and it is appropriate for a 2 lot subdivision and hardship based on strict application of the zoning criteria. This lot is 0.94 acres, looking at other lots with frontage along Green St, most are about .17-.3 acres, this property is about twice as large. With 217.6' of frontage about 14' short

of being compliant, do not need variances for lot size. Does look like a double lot when reviewing lots across the street, do feel it is uniquely situated with special conditions relative to properties in the area relative to the 2-lot subdivision they are requesting. Due to the special conditions, there is no fair and substantial purpose of the zoning ordinance minimum frontage or side setback requirements and application here, sufficient buildable area, no overcrowding, the foundation under the shed is hardship because they cannot just pick up and move it, lot 1 is compliant with frontage, lot 2 will have over a hundred feet of frontage, both lots have safe and sufficient access with existing curb cuts, special conditions qualify as a hardship. The purpose of the zoning ordinance seeks to protect will still be observed if the Board grants the variances. Proposed use is reasonable.

Keiser opened for public comment

No public comment.

Brooks inquired the type of foundation under the shed.

Swinerton stated the shed has a block foundation that is about 2' high with poured concrete floor inside.

Jones inquired if there were any commercial operations on the site now.

Allard stated no and none proposed.

Keiser inquired how the applicant is applying the special condition of the property for the two variances being requested, what is that special condition and how is it creating a hardship.

Allard stated there are several special conditions but particularly the size of the lot. For the hardship analysis have to look at the conditions of this property versus others in the area. Reviewing this lot compared to others in the area it appears as a double lot, is about 3x larger than other lots on Green Street. When looking at the special conditions and if it is fair to apply the strict application of the zoning ordinance it has to make sense, the lot size is unique based surrounding properties, most important when discussing subdivision because the purpose to avoid overcrowding and development. Does not think those are issues here due to the special conditions of the lot.

Keiser stated the size of the amount meets the requirement for a subdivision, but asking for two variances, does the size of the lot create a hardship for the variances.

Allard stated the standard is owing to special conditions there is no fair and substantial relationship between strict application of the particular regulation and the purpose of the regulation. If one has enough land area, enough frontage for safe access, want to do a two lot subdivision, the line has to be drawn somewhere, based on special condition of lot size itself, because they have enough area, are so close in frontage requirements and the shed cannot be moved due to being on a foundation but no where else to put the property line, based on special condition of the size of the property there is no fair and substantial to strictly enforce the minimum frontage requirement and side setback requirement because the purpose of the requirements are to prevent overcrowding and safe access. Those problems are not present because they have almost fully compliant frontage, the shed cannot be moved and think that is a hardship, no where else for the line to go without the shed remaining in setback and cannot move because of the foundation. If the variances are granted the harm those restrictions are to prevent are not present.

Keiser stated discussion of the location of the lot line, is there a reason it located in the place it is.

Allard stated from a design perspective it is the most zoning compliant why to draw the line. To alter it would either require each lot to seek a frontage variance or require side setback variance for the barn or shed or both.

Hilton inquired the distance between the shed and the barn.

Allard stated just under 20' and the setback requirement is 10'.

Jones stated if the shed is getting its electricity from proposed lot 2, will there be an easement for the electric service to the shed or if there were other utilities servicing the shed.

Allard stated yes it would require an easement if the properties were to come under different ownership. No other services.

Jones noted the applicant stated both lots have service by sewer, does the barn or garage have a bathroom. Or is it that there would be a new service connection.

Allard stated no bathrooms, it would have a new service connection as discussed at SRTC.

Jones inquired if there was any consideration or correspondence with the abutter on the North regarding the house encroachment.

Allard stated not that he is aware of, old house that has been in place for about 80 years.

Jones noted the lot line is located arbitrarily but either way a variance is required.

Allard explained the reason for the proposed lot line location.

Keiser closed the public hearing.

Jones stated this is a larger lot than surrounding properties, intention to hold the 115' frontage on at least one of the lots at least is adequate and asking for about 12-13' relief from frontage requirement is reasonable. For the shed, though the line could have been moved over some, he would prefer the larger structure (the barn) be the compliant structure between the two.

Regional Impact MOTION: Hilton stated I move that the variance request of Deborah Wade **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

The MOTION is SECONDED by Jones.

The MOTION CARRIES 5-0.

Brooks stated he agrees with Jones' comments, having the shed closer to the line makes sense because it is the smaller structure, see no other way to do this without the encroachment.

Keiser stated there are several properties in the area that are larger, to call it special conditions because it is larger is a stretch when there are two others that are as larger as this one. There is enough property to make two lots, but what is the special condition of the property that makes the hardship. For the frontage, one thing he considers is the size and shape of the lot, this lot expands out and it's a unique or special shape, that makes a special condition. The new lot will be 25,000 SF, can see the hardship criteria is met for the frontage requirements. Regarding the shed, does not find the proposed lot line to maximize the compliance with the Zoning Ordinance, find that putting the shed at 2.26' it is an extreme, making a farce of the 10' setback requirement which is to not encroach on the neighbor's space of their property. This does not minimize the encroachment and does not think it meets the spirit of the ordinance nor find the hardship, other than that it is existing shed, one does not have to subdivide the lot, thinks the shed should be removed or modified. Does not feel the criteria is met for the shed.

Keiser inquired if the Board wanted to vote on these items separately or as one, if they vote as one, he would not be in favor.

Jones stated he agrees it is not drawn in the best location, but would argue that the extreme would be if it was at a 0' setback. A variance is required no matter where the line is drawn, does not expect the shed to be as long of lasting as structure as the barn.

Perkins stated he agrees with Keiser, in support of the first variance for the frontage but having a hard time seeing the hardship to allow the shed so close to the property line.

Keiser stated he feels it would be prudent to have the variance votes separate.

Hilton stated in review of the lot line and wondering if the two dark dots are trees and if that splitting those, for one on each property, that is part of the reason to why the line is located where it is. Agrees that it would be better if the line was over a couple more feet, but if it is not 20' between the barn and shed a variance is

required regardless. To have the property re-surveyed is not worth it and would be in favor of both variances, applicant did try to meet the criteria as best as possible.

Brooks inquire if they could include a condition to require the lot line to be moved some. Keiser stated they have been briefed previously to not re-engineer the plans, the applicant submits what their request is. Mears stated she would agree with Keiser.

Jones stated in discussion of the barn variance, noted that if splitting up and approve the frontage area but deny the shed variance the applicant would not be able to re-apply because it would not be a significantly different application and would not qualify.

There was a brief discussion on determination of a substantially different application.

MOTION #1: Perkins stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied as for the reasons discussed and I move that the request of Deborah Wade for a Variance from Table 5.A.1 to allow a two lot subdivision where lot 2 would have less than the minimum frontage, 102.16' of frontage where 115' is required **be GRANTED.**

The MOTION is SECONDED by Brooks. The MOTION CARRIES 5-0.

MOTION #2: Jones stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of reasons discussed and I move that the request of Deborah Wade for a Variance from Table 5.A.1 to allow a two lot subdivision where lot 1 would have a shed located within the 10' side setback at a 2.26' setback **be GRANTED.**

The MOTION is SECONDED by Hilton. The MOTION 3-2 (Keiser and Perkins voted in the negative)

B) Any other new business that may come before the Board.

None

Hilton **MOVED** to **ADJOURN** the meeting.

Perkins seconded the Motion.

The **MOTION CARRIED** 5-0 at 7:44PM.

Respectfully Submitted,
Dana Crossley, Planning Secretary